IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3865 OF 2006

A N D

FIRST APPEAL NO.1083 OF 2007

Kamlesh Durlabhji Doshi .. .. Appellant
(Orig. Plaintiff No.1)

v/s.

The Municipal Corporation & anr. .. Respondents
(Orig.Deft. & Orig.Plff.No.2)

Mr.Ashutosh Khandeparkar for Appellant.

Mrs.Nisha Dabhade for BMC.

CORAM : SMT.ROSHAN DALVI, J.

Dated : 18th April, 2007

P.C. :

1. This is a case of a litigant abusing legal and judicial process by continuous persistent and impertinent defaults. The Appellant was the original Plaintiff in the Suit in which the impugned order is passed by the Bombay City Civil Court.

He obtained an ad-interim and interim injunction restraining the Respondents (who were the original Defendants) from acting upon a notice issued under Section 351 of the B.M.C. Act, showing unauthorized construction.

2. It is the Plaintiff's duty to be diligent and ready with the evidence that the Plaintiff is going to lead in the Suit after obtaining interim and/or ad-interim relief. The Plaintiff abused his position by default. The Suit appears to have been adjourned five times for tendering the Affidavit of evidence of the Plaintiff. The Plaintiff is required to affirm and sign his Affidavit of evidence. The impugned order shows that his Advocate Mr.Murthy filed an application which has been taken on record as Exhibit-6 to withdraw his appearance. The Plaintiff was present in Court when that application was made.

3. The Plaintiff's Advocate is an officer of the Court. He owes duties and responsibilities to the Court. It appears that the

Plaintiff's Advocate performed those duties correctly. He took certain adjournments for the Affidavit of evidence. Affidavit of Evidence of the Plaintiff never came to be made, though the Plaintiff was present in Court. The Advocate, therefore, as the officer of the Court, withdrew his appearance. It is for the Plaintiff to prove his case. It is for the Plaintiff to tender his Affidavit of evidence. That having not been done after as many as five adjournments, the learned Judge dismissed the Suit after observing that he had no other alternative and after considering that predecessor had granted last chance to the Plaintiff on the last occasion that the Suit was on board.

4. I find the approach of the learned Judge absolutely correct as was of the Plaintiff's Advocate.

5. It is argued on behalf of the Appellant-Plaintiff that the Plaintiff was taken by surprise that his Advocate withdrew his appearance and he should have given a notice earlier

that the Advocate was to withdraw his appearance. The Plaintiff's surprise is in vain. The Plaintiff was present in Court. The Suit was adjourned five times for the same reason. The order reflects the constraint as well as the disgust of the Advocate also in withdrawing his appearance. In fact, it is abundantly clear that the attitude of the Applicant (original Plaintiff) was only to delay the ultimate judgment.

6. It is time that discipline prevails over defaults. It is time that citizens who have to prove their case and require orders from Court, come to Court diligently and prove their case especially after obtaining interim reliefs.

7. I find nothing incorrect in the order that is passed. The Appeal is dismissed under Order 41 Rule 11 of the Code of Civil Procedure.

8. In view of the dismissal of the Appeal, Civil Application

No.3865 of 2006 is dismissed as infructuous.

(SMT.ROSHAN DALVI, J.)